on 31st January, 1961 by the chairman of the Central Licensing Board of the Road Transport Department in the name of the defendant as well as the names of his father and elder brother. This licence (P.4) was granted in the following terms:—

"The authorised vehicle shall be used for the carriage of Licensees' own goods being cinematographic equipment, including films and a generator within the States of Perak, Malacca, Johore, Selangor and Negri Sembilan."

The number of the vehicle in question was not given in the haulage permit, but it was stated in the inspection report of the Senior Registrar and Inspector of Motor Vehicles, Selangor dated 21st February, 1961 (Exhibit D.5). Against the column "Remarks" in D.5 were the words "One bench seat 60 inches wide fitted at rear". A clerk named Kumaraya Kumaraja from the office of the Senior Registrar and Inspector of Motor Vehicles, Selangor (P.W.2) gave evidence to say that according to the records of the Registrar a haulage permit was issued to motor vehicle BD 862 on 31st January, 1961. According to him the bench seat fitted at the rear of the vehicle would be behind the driver's seat.

It is quite clear from the evidence that the defendant bought the motor vehicle in question to use it for the purpose of his business and not as a private passenger car. The essential purpose for which it was used was the carriage of goods and equipment in connection with the defendant's business. Clearly therefore there was a misrepresentation or non-disclosure as to the purpose for which the vehicle was to be used. Sun Chung Ta (P.W.1), the manager of the plaintiff company, has stated that if the vehicle was to be used for commercial purposes his company would have issued not a private car policy but a commercial vehicle policy, in which event the premium charged, the other conditions and limitations as to use would be different. Moreover, the premium charged would be higher.

Mr. Palasuntharam on behalf of the defendant says that as the defendant cannot read and write English and as he was not asked any questions as to the type of the vehicle, Wong Peng Wah in looking at the vehicle and entering its description in the insurance proposal form was acting as the plaintiff's own agent, so that his knowledge must be imputed to the plaintiffs. He has thus argued that there was no misrepresentation on the part of the defendant. I find very little substance in that argument because the law in such cases is quite clear, as set out in the following paragraph at page 204 of *Halsbury's* Laws of England, 3rd Edition, Vol. 22:—

"In filling in the answers in a proposal form an insurance agent, except in the case of industrial assurance, is normally regarded as the agent for the proposer, at the request, express or implied, of the latter. Even if the agent knows the truth, his knowledge is not in that case imputed to the insurers. If he is careless in filling up the form, it is the proposer, not the insurers, who may maintain an action in negligence against him. Furthermore, where the proposer himself signs the proposal form, as is usually insisted upon by insurers, by signing he adopts whatever answers the agent has inserted and makes them his own. This is clearly the case where he reads and approves the answers before signing; but the position is the same if he chooses to sign the proposal without reading them, or if he signs the form when it is blank, leaving it to the agent to insert the answers later. It is irrelevant to inquire how the inaccuracy arose; or whether the agent acted honestly or dishonestly; or whether the agent had forgotten or misunderstood the correct information he had been given; or whether the answers were a mere invention on the part of the agent; if the result is that inaccurate or inadequate information is given on material matters, or that a contractual stipulation as to accuracy or adequacy of any information given is broken, it is the proposer who has to suffer."

On the authority of the above statement of the law the plaintiffs are entitled to avoid the policy of insurance dated the 10th December, 1960 bearing No. MC/02018 on the ground that it was obtained by the non-disclosure of material fact or by a representation of fact which was false in some material particular, and I make a declaration accordingly with costs against the defendant.

Declaration accordingly.

Solicitors: *Allen & Gledhill; V. K. Palasuntharam.*

PUBLIC PROSECUTOR v. NG NAM ONN

[R.Cr.J. (Ong J.) September 12, 1964]

[K.L. — Criminal Revision No. 19 of 1964]

Criminal Procedure — Withdrawal of charge by prosecution — Order of discharge should amount to acquittal.

On the withdrawal of a charge by the Deputy Public Prosecutor against the accused on a charge under the Betting Ordinance the magistrate made an order of discharge *simpliciter* and not an acquittal.

Held: where the prosecution withdraws a charge it has been the established practice to acquit the accused.

[**Editorial Note:** The attention of magistrates is also drawn to the Editorial Note in *Ariffin* v. *Public Prosecutor* [1953] M.L.J. 126.]

CRIMINAL REVISION.

Ong J.: The accused Ng Nam Onn was arrested in the premises of the Selangor Turf Club on April 19, 1964 and charged in the Magistrate's Court, under section 6(3)(a) of the Betting Ordinance, 1953, for having acted as a bookmaker. He was granted bail. The trial was twice adjourned, and on August 27, after the prosecuting officer was granted a brief adjournment to obtain instructions from the Deputy Public Prosecutor, the charge was withdrawn.

Thereupon the magistrate made an order for discharge *simpliciter* and not an acquittal. This clearly is wrong. When there is no acquittal an accused person is liable to be retried on the same charge. Accordingly, when the Deputy Public Prosecutor decided to enter a *nolle prosequi*, it is not fair to have a charge hanging over an accused person indefinitely. It has been the established practice to acquit in such cases. Therefore, acting in revision, under section 323 of the Criminal Procedure Code, I direct that the order made be amended to one of acquittal.

Order substituted to one of acquittal.

YONG KUAN TEIK v. DEVAN NAIR

[O.C.J. (Ismail Khan J.) September 26, 1964]
[K.L. — Election Petition No. 1 of 1964]

Election Petition — Failure to serve notice of presentation of petition within ten days of such presentation — Whether irregularity or nullity — Election Offences Ordinances, 1954, s. 38(1) — Election Petition Rules, 1954, rr. 10 & 15.

This was an application to strike out an election petition on the ground that notice of the presentation of the petition was not served by the petitioner on the respondent within ten days of such presentation as required under rule 15 of the Election Petition Rules, 1954.

Held: the provisions of rule 15 of the Election Petition Rules, 1954 are mandatory and failure to comply with them renders the petition a nullity.

Cases referred to:—

(1) *Au-Yong* v. *Dicum & Anor.* [1963] M.L.J. 349

(2) *Sheldon* v. *Brown Bayley's Steelworks Ltd. & Anor.* [1953] 2 All E.R. 894.

(3) *Re a Debtor* (No. 441 of 1938) *Ex parte Petition Creditor* v. *Debtor* [1938] 4 All E.R. 92.

(4) *Pike* v. *Michael Nairn & Co. Ltd.* [1960] 2 All E.R. 184.

(5) *Pritchard* v. *Deacon* [1963] 2 W.L.R. 685.

(6) *Williams* v. *Mayor of Tenby & Ors.* (1879) L.R. 5 C.P.D. 135.

ELECTION PETITION.

R. Ponnudurai and *V. K. Palasuntharam* for the petitioner.

Yong Pung-How and *E. W. Barker* for the respondent.

Cur. Adv. Vult.

Ismail Khan J.: This is an application to strike out an election petition on the ground that notice of the presentation of the petition was not served by the petitioner on the respondent within ten days of such presentation as required under rule 15 of the Election Petition Rules, 1954.

In this case the election was held on the 25th April, 1964, to elect a member for Bungsar Ward to the Dewan Ra'ayat. The result of the election was published in the *Gazette* on 11th June, 1964, the respondent being returned as duly elected. On 29th June, 1964, the petition was lodged with the Registrar of the High Court at Kuala Lumpur, that is, within twenty-one days, under section 38(1) of the Election Offences Ordinance, 1954. The respondent did not avail himself of the provisions of rule 10 of the above rules to leave with the registrar a writing, appointing an advocate and solicitor to act as his solicitor in case there should be a petition against him or stating that he intended to act for himself. He left no address with the registrar at which notices addressed to him might be left.

On 7th July, 1964, the registrar wrote to the petitioner's solicitors, in reply to their letter of 3rd July, 1964, that the respondent had left no address for service. On the same day the petitioner's solicitors sent to the Registrar a copy of the petition and a copy of the notice of presentation of the petition. On 11th July, 1964, they wrote to the Registrar requesting him to effect service of the petition and notice on the respondent at what was described in their letter as the "Respondent's permanent place of abode No. 12B, Bintong Park, Singapore". However, on 23rd July, 1964, the petitioner published a notice of the presentation of the petition in the *Gazette*. On the same day the respondent appointed his solicitors, Messrs. Shook Lin & Bok, to appear for him in the matter of the petition. On 17th August, 1964, the respondent obtained an order for the petitioner to deliver to him certain particulars.

On 25th August, 1964, the respondent took out this summons to strike out the petition.

The application is resisted by Mr. Palasunthram for the petitioner on various grounds. I shall dispose of his first two objections which, in my opinion, are without any merit. It was argued for the petitioner that under rule 10, as the respondent had failed to appoint an advocate and solicitor or to leave an address for service, the petitioner need only to leave the notice with the registrar and that this would be deemed good service. I do not think Mr. Palasunthram can be seriously pressing this point. Rule 15 contains the relevant provision as to the service of notice. It reads:—

"Notice of the presentation of a petition, accompanied by a copy thereof, shall, within ten days of the presentation of the petition, be served by the petitioner on the respondent. Such service may be effected either by delivering the notice and copy aforesaid to the solicitor appointed by the respondent under Rule 10 of these Rules or by posting the same in a registered letter to the address given under Rule 10 of these Rules at such time that, in the ordinary course of post, the letter would be delivered within the time above mentioned, or if no solicitor has been appointed, or no such address given, by a notice published in the *Gazette* stating that such petition has been presented, and that a copy of the same